

## **TITLE 20 UTILITIES**

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  - 20-3 Transmission Pipelines
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## **CHAPTER 20-1 COMMUNITY TELEVISION OF UTAH, INC., FRANCHISE**

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**20-1-101. INTENT.**

The City finds that the continuation and development of cable television and communications systems has great benefit and impact upon the residents of West Valley City. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the City's intent in granting this Franchise to insure that City residents receive a high quality cable television and communications service comparable to the best offered in any surrounding community in Salt Lake County; that any inconvenience to residents in the development and maintenance of the system be minimized; and that the City is properly compensated for the administration of this Franchise and the use of the public facilities permitted by this Chapter. It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and the Franchise issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof.

**(Ord. No. 92-18 Rep & Reen 05/01/1992)**

**20-1-102. SHORT TITLE.**

This Chapter shall be known and may be cited as the "West Valley City Cable Communications Franchise Act".

**(Ord. No. 92-18 Rep & Reen 05/01/1992)**

**20-1-103. DEFINITIONS.**

For the purposes of this Chapter the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (1) City shall mean West Valley City, State of Utah and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.
- (2) Cable Communications System, System, or Systems, also referred to as Cable Television System, Cable System, CATV System, or Community Antenna TV System, shall mean a system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the City.
- (3) Franchise shall mean the right granted to the Grantee by which the City authorizes the Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the City. The Franchise awarded is a nonexclusive Franchise.
- (4) Grantee shall mean TCI Cablevision of Utah, Inc., its agents, employees, lawful successors, transferees or assignees.
- (5) Grantor means the City.

- (6) Franchise Fees means any tax, fee or assessment of any kind imposed by the City on the Grantee solely because of its status as a Franchisee. The term "Franchise Fee" does not include:
- Any tax, fee, or assessment of general applicability, including any such tax, fee, or assessment imposed on both utilities and cable operators or their services;
  - Capital costs which are required by the Franchise to be incurred by Grantee for public, educational and governmental access facilities;
  - Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  - Any fee imposed under Title 17, United States Code.
- (7) Gross Revenues shall mean all cash, credits, property of any kind or nature or other consideration received directly or indirectly by the Grantee, arising from or attributable to operation of the Cable Television System in the City, including but not limited to:
- Revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including leased access fees);
  - Revenue from all charges for the insertion of local commercial advertisements upon the Cable Television System;
  - Revenue from all charges for the leased use of studios;
  - Revenue from all charges for the installation, connection and rein-statement of equipment necessary for the utilization of the Cable Television System and the provision of subscriber and other services; and
  - The sale, exchange or use or cablecast of any programming developed for community use or institutional users.
- Gross Revenues shall include, value at retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by the Grantee in consideration for performance by the Grantee of any local advertising or other service in connection with the Cable Television System in the City.
- (8) Leased Access shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the City and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 U.S.C. §§ 521, et seq.).
- (9) Person means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.
- (10) Subscriber means any person who legally receives any one or more of the services provided by the Cable Communications System.
- (11) Street shall mean the surface of and the space above and below any public street, road, highway, easement, lane, path, alley, court sidewalk, parkway, rights of way, or driveway now or hereafter existing as such within the City and over which the City has jurisdiction.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-104. POLICE POWER.**

Nothing in this Chapter shall be construed as an abrogation by the City of any of its lawful police powers.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-105. GRANT OF FRANCHISE.**

- (1) Grantor hereby grants to Grantee a nonexclusive, revocable Franchise to construct, operate, maintain, and reconstruct, a Cable Communications System within the City. The Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by the provisions of this Chapter.
  - a. This Franchise is granted under the terms and conditions contained herein and is intended to be consistent with federal laws and regulations and state general laws and regulations.
  - b. The Franchise granted is hereby made subject to the general City Code provisions now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of the Grantor regarding permits, fees to be paid or manner of construction. The Grantee agrees to abide by any existing or new ordinances or regulations, adopted in the manner provided by law, so long as they do not substantially impair the rights granted pursuant to this Franchise.
- (2) The term of this new Franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall remain in effect through July 1, 2010, unless terminated sooner as hereinafter provided.
- (3) Renewal shall be conducted pursuant to applicable law in effect at that time, which is currently Section 626 of the Cable Communications Policy Act of 1984.
- (4) The Franchise granted is nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Communications System as it deems appropriate, provided however, that such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to any Grantee. The material provisions of such additional Franchises shall be reasonably comparable to those of the existing Franchises in order that an unfair competitive advantage is not granted to one operator over another.
- (5) Subject to federal law, no Cable Communications System shall be allowed to occupy or use the streets or operate within the City without being granted a Franchise.
- (6) Subject to federal law, the Grantor may establish appropriate requirements of new Franchises or Franchise renewals, and may modify these requirements from time to time to reflect the future cable related community needs and interests, taking into account the costs of meeting such needs and interest.
- (7) The Grantor may grant a Franchise for all or any defined portion of the City.
- (8) All new Franchise applications and renewal applications, subject to federal law, when filed shall be available for public inspection at places designated by the Grantor. Information identified by Grantee or an applicant as "proprietary and confidential" shall not be disclosed by City without Grantee's or the applicant's consent, except to the extent state law or any City ordinance adopted pursuant to state law require its disclosure. Grantor may grant or may decline to grant any Franchise.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-106. AUTHORITY FOR USE OF STREETS.**

For the purposes of operating and maintaining a Cable Communications System in the City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cable, conductors, ducts, conduits, vaults,

manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

- (1) Prior to construction or alteration, Grantee shall in each case file plans with all appropriate departments and utility companies and receive written approval of such plans, which approval by City departments shall not be unreasonably withheld. Issuance of excavation, construction or similar permits as required by ordinance shall constitute such written approval.
- (2) Grantee shall construct and maintain a Cable Communications System so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee shall make reasonable best efforts to individually notify all residents affected by proposed construction in writing prior to the commencement of that work, provided that such prior notification will not unnecessarily delay repair or restoration of existing services or slow expeditious remedy of unsafe conditions.
- (3) Notwithstanding the above grant to use streets, no street shall be used by Grantee if City, in its sole option, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.
- (4) Nothing contained herein should be construed as granting to Grantees any rights whatsoever to the use of any private property without the consent of the owner thereof unless such is permitted by Section 54-4-13, Utah Code Annotated (1953), as amended.

**(Ord. No. 92-18 Rep & Reen 05/01/1992)**

## **20-1-107. CONDITIONS ON STREET OCCUPANCY.**

All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

- (1) Grantee shall repair or replace, at its own expense, any and all rights of way, pavements, sidewalks, street improvements, excavations, other facilities, landscaping or other improvements, public or private, used or damaged in the Franchise operations, including construction, installation, and maintenance thereof. Such repair or replacement shall return the property to as good or better condition as it was prior to the work being done.
- (2) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
  - a. Grantee shall notify City at least 72 hours before doing significant trimming. In the event of an emergency where immediate significant trimming is needed to restore existing services or remedy an unsafe condition, Grantee, after making or attempting oral notification to the Public Works Department of the City, may trim the trees, but only the minimum necessary to restore the service or remedy the unsafe condition. The City may use inspectors to observe the Grantee's trimming of the trees to ensure that it is done properly, as provided in Section 20-1-107(2)(e) below.
  - b. The Grantee shall make a reasonable best effort, including written notice, to notify owners of property adjacent to the trees to be trimmed at least 72 hours prior to doing the work.

- c. As used herein, "significant trimming" is any trimming of trees beyond minor cuts that do not substantially change the aesthetic character of the tree or damage or injure the tree.
  - d. For all trimming, the Grantee shall use generally accepted pruning standards of modern arboriculture.
- (3) The Grantee shall hold harmless the City and its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or any injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-108. ERECTION OF POLES.**

- (1) The Franchise shall not be deemed to expressly or impliedly authorize the Grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the City. Such consent shall be given upon such terms and conditions as the City Council in its sole discretion may prescribe which shall include a requirement that the Grantee perform, at its sole expense, all tree trimming required to maintain the poles, cable and wires clear of obstructions.
- (2) With respect to any poles or wire-holding structures which Grantee is authorized to construct and install within streets, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or wire-holding structures by the Grantee, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Grantee's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed upon by the parties. Such authorization shall include the condition that the public utility or public utility district pay to the Grantee any and all actual and necessary costs incurred by the Grantee in permitting such use and shall indemnify the Company from and against any claims or causes of action brought about due to such use.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-109. UNDERGROUNDING.**

- (1) Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be located so as to minimize visual and physical impact on adjacent yards and landscapes insofar as it is technically and economically feasible and not unsafe. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district suspended above the ground from poles, a Grantee may construct and install its cables, wires and other facilities from the same poles.
- (2) With respect to any cables, wires and other like facilities constructed and installed by a Grantee above ground, the Grantee shall, at its sole expense, reconstruct and install such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area. The duty of a Grantee to place

its cables, wires and other facilities underground shall arise only if all like facilities of utilities which are existing above ground are placed underground, provided however, a Grantee is given reasonable notice of such event so that it may place its facilities underground in conjunction with the utility.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-110. RELOCATION.**

- (1) If during the term of the Franchise the City, a publicly owned utility, a public water district, a public sanitation district, a public drainage district or any other similar special public district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire, conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of draining, sewage or other liquids, the Grantee, shall, except as provided in Section 20-1-110(2) or as otherwise provided by law, at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed.
- (2) If such removal or relocation is required within the subdivision in which all utility lines, including those for the Cable Television System, were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided that the City shall not be liable to a Grantee for such costs. Regardless of who bears the costs, Grantee shall take action to remove or relocate upon reasonable notice at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the Grantee advising the Grantee of the date or dates removal or relocation is to be undertaken.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-111. MOVEMENT OF BUILDINGS.**

Grantee shall, upon request by any person holding a building moving permit, Franchise or other approval issued by the City or State of Utah, temporarily remove, raise, or lower its wire to permit the movements of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-112. REQUIRED EXTENSIONS OF SERVICE.**

- (1) Grantee is hereby authorized to extend the Cable System as necessary, desirable, or as required pursuant to the terms hereof within the City. However, at the effective date of this Franchise, the Grantee was capable of providing service to 90 percent of the City residents. Grantee shall develop the system such that 85 percent of the City residents are always capable of being served by the Grantee. However, Grantee's obligation to maintain the percentage shall be subject to Section 20-1-112(2).



- (2) Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers; provided that such extension is technically feasible, and will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section 20-1-112(3) of this Chapter.
- (3) No Subscriber shall be refused service arbitrarily.
- (4) For unusual circumstances, such as a Subscriber's request to locate his cable drop underground, the existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing stand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-113. CITY BUILDINGS PROVIDED SERVICE.**

The Grantee shall provide, without charge, one (1) outlet of expanded basic service to each governmental building, including but not limited to fire stations, police substations, and public and non-profit private school buildings that are passed by its Cable System. The outlets of expanded basic service shall not be used to sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. The distribution of the cable facility inside such building and the extent thereof shall be the option, duty and expense of the building owner. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to the building exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the City agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of extended basic service are provided to such buildings, the City may also be required to pay the service fees associated with the provision of extended basic service and the additional outlets relating thereto.

**(Ord. No. 92-18, Rep&Reen, 05/01/92)**

### **20-1-114. REMOVAL.**

- (1) Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City nor an assignee purchased the Cable Television System, the Grantee may remove any

underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. Subject to federal law, the Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City Council to remove cable or conduit shall be mailed to the Grantee not later than ninety (90) calendar days following the date of expiration of the Franchise. A Grantee shall file written notice with the City Recorder not later than thirty (30) calendar days following the date of expiration or termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the Franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

- (2) Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City nor an assignee purchased the System, the Grantee, at its sole expense, shall, subject to federal law unless relieved of the obligation by the City, remove from the streets all above ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assignee.
- (3) The Grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the Franchise.

**(Ord. No. 92-18, Rep&Reen, 05/01/92)**

## **20-1-115. GENERAL CAPABILITY.**

- (1) Each Cable Television System shall, at minimum:
  - a. Relay to subscriber terminals those broadcast signals required by the FCC;
  - b. Distribute in color all television signals which it receives in color;
  - c. Make available upon request by any subscribers receiving channels showing premium services and pay per view events, at the expense of the subscriber, a lockout device which prevents the unauthorized viewing of such channels.
  - d. All new system extensions shall have a minimum activated capacity of four hundred fifty (450) megahertz.
- (2) Because Cable System technology is rapidly changing, it is difficult for the City to set a standard by which the Grantee will upgrade and maintain the Cable Television System in the City. Therefore, insofar as it is technically and economically feasible, Grantee shall upgrade and maintain the System quality equal to or better than the best system that the Grantee provides to any community in Salt Lake County where it has a Franchise.

- a. If the Grantee determines that such an upgrade is not technically or economically feasible, it shall submit to the City full documentation, in detail, setting forth how and why it made such a determination. Such a determination shall use reasonable criteria based on industry standards. At such point in time an upgrade, which was originally found not to be technically or economically feasible, becomes feasible, it shall be implemented as provided herein.
- b. If applicable, Grantee and City shall negotiate a reasonable time table for implementation of any changes in technology as necessitated by this provision.
- c. Implementation of technology which is deemed to be experimental by industry standards can be implemented only at the sole discretion of Grantee.

**(Ord. No. 92-18 Rep & Reen 05/01/1992)**

### **20-1-116. STANDBY POWER.**

Each Cable Television System shall include equipment capable of providing standby powering for headend. The equipment shall be constructed so as to automatically revert to the standby mode when the AC power returns.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-117. OVERRIDE CAPABILITY.**

Each Cable Television System shall include an "Emergency Alert Capability" which, when accessed by the telephone and security code, will permit the City, in times of emergency, to override the audio of all channels on the Cable System simultaneously. Each Cable Television System shall include the capability for emergency information and instruction to be given from the City's headquarters for Disaster and Emergency Services. The City shall agree to indemnify, save and hold harmless Grantee from and against any liability resulting from use of the aforementioned emergency override capability. The City agrees to cooperate with other governmental entities regarding the use of the override capabilities in order to prevent two or more governmental entities from using the System at the same time.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-118. INTERCONNECTION.**

The Cable Television System shall, insofar as technically and economically feasible, be compatible with and able to be interconnected with other Cable Systems within the City and the greater Salt Lake County area, and other areas adjacent to the Franchise Area so as to enable each system to carry and cablecast the public, educational, and governmental access programming of the other systems.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-119. TECHNICAL STANDARDS.**

- (1) Grantee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC.
- (2) Grantee shall at all times comply with National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); Applicable FCC and other federal, state and local regulations; and codes and other ordinances of the City.
- (3) In any event, the Cable Television System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.
- (4) All working facilities, conditions, and procedures, used in or occurring during construction of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- (5) Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in reasonable cooperation with public and private utilities serving the City following accepted construction procedures and practices and working through existing utility coordinating committees and organizations.
- (6) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- (7) Any antenna structure used in the Cable Television System shall comply with the specifications for construction, marking, and lighting of antennae structures required by the United States Department of Transportation.
- (8) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.
- (9) Grantee shall at all times retain control of all of its contractors and their subcontractors and respond to complaints and concerns of the City and its citizens.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-120. EDUCATIONAL AND GOVERNMENTAL ACCESS.**

Upon request by the City, Grantee shall make available one channel to be used for educational, and governmental use. The channel shall be shared with the municipalities receiving programming from the West Valley City, Draper City, and Salt Lake City headends. When first-run programming on the access channel occupies fifty percent (50%) of the hours between 11 a.m. and 11 p.m., for any twelve (12) consecutive weeks, the City may request the use of an additional channel for the same purpose. The additional channel must maintain programming twenty-five percent of the hours between 11 a.m. and 11 p.m. for twelve consecutive weeks. If this level of programming is not maintained, the channel will return to the Grantee for its use. Grantee also reserves the right to program the designated education, and governmental channels during the hours not used by the City or other Governmental entities. The City shall agree to indemnify, save, and hold harmless Grantee from and against any liability resulting from use of the aforementioned educational and governmental channels by the City.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-121. SUPPORT FOR USE OF ACCESS.**

Nothing contained in this Chapter shall be construed to limit the authority of the Grantee to make payments in support of the use of educational and/or governmental access. However, such payments are expressly not a requirement of any Franchise granted hereunder and shall in no event be considered in the calculation of Franchise Fees pursuant to this Chapter.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-122. AVAILABILITY OF ACCESS FACILITIES.**

- (1) Use of facilities, as they exist, for educational and governmental access upon the Cable Television System pursuant to Section 20-1-120 above shall be made available, without rental, deposits, or any other charge whatsoever, for use during normal business hours in connection with the production of educational and/or governmental access programming cablecast upon the Cable Television System. Grantee shall:
- (2) Allow all governmental entities desiring to cablecast educational and/or governmental access programming to produce programming upon and electronically interfere directly with Cable Television System of Grantee so as to effectively cablecast the educational and/or governmental access programming; or, in the alternative:
  - a. Upon the request of the City, Grantee shall assist in establishment of such reasonable rules and procedures, designed to promote the utilization of such educational and/or governmental access programming and subject to the approval of the City Council, which approval shall not be unreasonably withheld, whereby the Grantee shall accept and cablecast such educational and/or governmental access programming upon the Cable Television System as shall be provided to the Grantee by such persons and entities.
- (3) Grantee shall make all reasonable efforts to coordinate the cable casting of educational and/or governmental access programming upon the Cable Television System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-123. APPROVAL OF CONSTRUCTION BY CITY; INSPECTION; CORRECTION OF DEFECTS IN SYSTEM.**

- (1) Except for individual service drops, the Grantee shall not, within the City, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the City. Such approval shall not be unreasonably withheld and action shall be taken on any request for approval within three (3) business days of receipt of the request, or it shall be deemed granted. Grantee shall be able to make emergency repairs as needed.
- (2) The City shall have and maintain the right to inspect the construction, operation and maintenance of the system by the Grantee to insure the proper performance of the terms of this Chapter.
- (3) In the event the Grantee should fail to comply with the terms of this Chapter or any other City permit issued for construction, the City shall give Grantee written notice of such non-compliance

and a reasonable time for correction. After reasonable written notice and failure of Grantee to make timely correction, the City may:

- a. Make such correction itself and charge the cost of the same to the Grantee; and/or
- b. Secure the proceeds from any financial performance instrument posted by the Grantee.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-124. LOCAL OFFICE, NOTICE AND COMPLAINTS.**

The Grantee shall provide a quality of service equal to or better than the best service quality that the Grantee provides to any community in Salt Lake County where it has a franchise. In addition:

- (1) The Grantee shall maintain a local business office to which subscribers may telephone during regular business hours without incurring added message or toll charges and shall maintain a telephone answering service to receive complaint calls during non-business hours. Under normal operating conditions, the Grantee shall respond to all service calls within 36 hours during the normal work week, and correct any malfunctions or deficiencies as promptly as possible.
- (2) Except in emergency situations the Grantee shall make reasonable best efforts to notify subscribers in advance if interrupted service is necessary for extensive repairing or upgrading of the Cable System.
- (3) If a subscriber or other person or entity making use of the Cable System has an unresolved complaint concerning quality of service, equipment malfunctions, access to or programming of public channels, or other matters pertaining to the Cable System, that party shall, after reasonable attempts to resolve the complaint with the Grantee, have the right to file a complaint before the City Manager and meet jointly with a representative of the City and the Grantee to fully discuss and resolve such matters.
- (4) The Grantee shall have personnel "on call" during non-business hours who can resolve system service problems.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-125. TRANSFERS.**

- (1) The Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person except to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the City, which consent shall not be unreasonably withheld.
- (2) No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.
- (3) The proposed assignee must show technical ability, financial capability, legal qualifications and general qualifications as determined by the City and must agree to comply with all provisions of the Franchise and such conditions as may be prescribed by the City Council expressed by resolution. The City shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.
- (4) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is

not limited to major stockholders but includes actual working control in whatever manner. Every change, transfer, or acquisition of control of the Grantee shall make the Franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the City in any such inquiry.

- (5) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty (50%) percent of the voting interest of the Grantee.
- (6) The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the Franchise.
- (7) In any absence of extraordinary circumstances, the City will not approve any transfer or assignment of the Franchise prior to substantial completion of construction of the System.
- (8) The City Council reserves the right of "first refusal" to purchase a Cable System at the current market value price if and when it is placed on the market for sale. However, should the sale of the system be part of a unified sale of some or all assets of the Grantee or any affiliated organization, then this section shall not be applicable. In no event shall Grantee be required to receive less than a fair market value as a going concern.
- (9) In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the Franchise agreement.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-126. BONDS AND OTHER SURETY.**

- (1) Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. Grantee and City recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for cable services. Initially, no bond or other surety will be required. In the event that one is required in the future, the City agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.
- (2) Notwithstanding the above provisions, Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within City streets.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-127. INDEMNIFICATION BY GRANTEE.**

- (1) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise, including, but not limited to:
  - a. For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through, or alleged to arise out of or through, the acts or omissions of the Grantee or its officers, agents, employees or contractors or to which



- the Grantee's or its officers', agents', employees' or contractors' acts or omissions in any way contribute.
- b. Arising out of or alleged to arise out of any claim for damages for Grantee's alleged invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation; or
  - c. Arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of Utah, the City or other local agency applicable to the Grantee in its business.
- (2) Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstance relieve the Grantee from its duty of defense against liability or paying any judgment entered against such party.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-128. GRANTEE INSURANCE.**

As a part of the indemnification provided by Section 20-1-127, but without limiting the foregoing, Grantee shall file a certificate of insurance, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, automobile liability (owned; non-owned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as an additional insured the City, and in their capacity as such, their officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars (\$2,000,000.00) per occurrence. The insurance policy or policies shall contain contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section 20-1-127. The insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Utah, and subject to the reasonable approval of the City.

The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether by the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Recorder, and that such notice shall be transmitted postage prepaid, with return receipt.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-129. PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS.**

- (1) In the event that the City determines that Grantee has violated any provision of the Franchise, the City may make a written demand on Grantee that it remedy such violation. If the violation is not remedied, or in the process of being remedied, to the satisfaction of City within thirty (30) days following such demands, an administrative hearing shall be held to review the alleged violation. If this hearing does not result in a satisfactory resolution, and/or Grantee requests a public hearing, then a public hearing shall be held, and Grantee shall be provided with an



opportunity to be heard upon thirty (30) days written notice to Grantee of the time and place of the hearing and the allegations of Franchise violations.

- a. Any hearing held may be conducted by the City Council or, at the sole discretion of the Council, by a hearing officer appointed by the Council to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of Utah.
  - b. The cost of providing quarters for the hearing, compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the City. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.
  - c. All witnesses testifying at any hearing held pursuant to this section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State of Utah shall not be applicable to the hearing. The provisions of the Administrative Procedures Act, commencing at Section 63-46b-1, et seq., U.C.A 1953, as amended, or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.
  - d. If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the City Recorder and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon receipt of such a recommended decision, the City Council may, without a hearing except as otherwise required below, either:
    - i. adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;
    - ii. adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;
    - iii. based upon the record of the hearing, modify the findings of fact, conclusions or decisions and adopt the recommended decision as so revised;
    - iv. reject the recommended decision and conduct a new hearing.
  - e. If the hearing is conducted by the City Council, following conclusion of the hearing, the City Council shall adopt a decision which includes findings of fact and conclusions.
- (2) If, after notice is given and, at Grantee's option, a full public proceeding is held, the City determines that such violation occurred or still exists, then Grantor may impose a remedy including, without limitation:
- a. making the correction itself, and charging the cost to the Grantee;
  - b. commencing an action at law for monetary damages, or seeking other equitable relief;
  - c. requiring the filing of a financial performance instrument by the Grantee to insure future performance; or
  - d. in the case of a substantial default of a material provision of the Franchise, declaring the Franchise terminated.
- (3) If the decision by the City Council is that there are grounds for termination of the Franchise and that the Franchise shall be terminated, the City Council may adopt a resolution which terminates the Franchise and includes its decisions. The effective date of termination shall be such date as is prescribed by the City Council, within its sole discretion, in the resolution.
- (4) The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, for such non-compliance or alleged

defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-130. ALTERNATIVE REMEDIES.**

No provision of this Chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or to judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

No provision of this Chapter shall be deemed to bar any rights the Grantee may have under law, which may include the Cable Communications Policy Act of 1984, as amended, to the extent it is in force, and the right to review of any decision by the City Council by a court of competent jurisdiction.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-131. NON-ENFORCEMENT.**

Grantee shall not be relieved of any obligation to comply with any of the provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City or its officers, agents or employees to enforce prompt compliance.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-132. COMMUNICATIONS WITH REGULATORY AGENCIES.**

Copies of all petitions, applications, communications, and reports submitted by Grantee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a Cable Television System or services provided through such a System, shall be made available to City upon reasonable request. Copies of responses or any other communications from the regulatory agencies to a Grantee likewise shall be made available upon reasonable request.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

### **20-1-133. RATES.**

- (1) The Grantee shall file with the City on December 31 of each year a full schedule of all subscriber and user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the cable communications system.
  - a. All rates shall be published on file with the City.
  - b. The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or marital status.

- (2) Nothing in this Chapter shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.
- (3) The Grantee may require all subscribers to pay for basic service not more than one (1) month in advance. The Grantee shall require no other advancement of payment for basic service, provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of Cable Communications Services or charges other than those for basic service.
- (4) The Grantee shall neither impose nor collect any additional charge for the disconnection of any installation or outlet.
- (5) In the event that a subscriber fails to pay as properly due and owing a fee or charge, the Grantee may disconnect the subscriber's service outlet upon giving ten (10) days written notice thereof.
- (6) The Grantee shall establish and conform to the following policy regarding refunds to subscribers and users:
  - a. If the Grantee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the Grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within five (5) days thereafter.
    - i. Nothing in this Section shall be construed to relieve the Grantee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.
    - ii. Nothing in this Section shall be construed as limiting the Grantee's liability for fines or penalties which may be imposed under this Chapter or awarded in accordance with any agreement for violation or breach of any of their provisions.
    - iii. Nothing in this Section shall be construed to limit the Grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.
  - b. In the event that a subscriber terminates basic service prior to the end of a pre-paid period, upon request, the pro-rata portion of any pre-paid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than fifteen (15) days after receipt of the request for refund.
- (7) The Grantee shall not charge a converter security deposit greater than such converter's actual cost to the Grantee. Any converter security deposit collected by the Grantee shall be returned to the subscriber twenty-four (24) months after the installation of such converter or upon termination of service by the subscriber and the return of such converter undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable, whichever occurs first.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **20-1-134. FRANCHISE FEE.**

For the use of the streets and for the purposes of providing revenue with which to defray the costs of regulation arising out of the granting of this Franchise under this Chapter, Grantee shall pay a Franchise Fee in the amount prescribed by Section 20-1-135 below.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-135. AMOUNT AND PAYMENT OF FRANCHISE FEE.**

- (1) During the term of the Franchise, beginning May 1, 1992, Grantee shall pay to the City an amount equal to five (5%) percent per year of the Grantee's annual Gross Revenue received. From January 1, 1992, to April 30, 1992, the Franchise Fee shall be at the 3 percent (3%) of basic service, as set forth in the previous Franchise ordinance.
- (2) The Franchise Fees for calendar year 1992 shall be paid by March 31, 1993. Thereafter, the Franchise Fee shall be paid quarterly forty-five (45) days after the end of each quarter. Not later than the date of each payment, the Grantee shall file with the City a written statement signed under penalty of perjury by an officer of the Grantee, which identifies in detail the sources and amounts of Gross Revenues received by a Grantee during the year for which payment is made.
- (3) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-136. INTEREST OF DELINQUENT FRANCHISE FEES.**

Any Franchise Fees which remain unpaid after the dates specified in Section 20-1-135 above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-137. ACCOUNTING STANDARDS.**

Within six (6) months after the Grantee's fiscal year ends, the Grantee shall provide to the City an unqualified certification of the accuracy of the annual Franchise Fee payment remitted for the preceding fiscal year. This certification must be prepared by a certified public accountant and prepared in accordance with generally accepted accounting standards.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-138. AUDITING AND FINANCIAL RECORDS.**

During the term of the Franchise, the City may, not more frequently than once each year, conduct an audit of the books, records and accounts of the Grantee for the purpose of determining whether the Grantee has paid Franchise Fees in the amounts prescribed by Section 20-1-135 above. The audit may be conducted by the Finance Department of the City or by an independent certified public accounting firm retained by the City, and shall be conducted at the sole expense of the City. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City, and mailed to the City and Grantee.

Each Grantee shall make available for inspection by authorized representatives of the City, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-139. AMENDMENTS.**

This Franchise may be amended by the City Council to incorporate any new rights granted to franchising entities or the Grantee by federal law or FCC rule.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

**20-1-140. PUBLICATION COSTS.**

The Grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this Franchise.

**(Ord. No. 92-18 Rep & Reen, 05/01/1992)**

## **CHAPTER 20-2**

### **UTAH POWER AND LIGHT FRANCHISE**

Sections:

- 20-2-101. Right of Franchise.
  - 20-2-102. Poles and Towers.
  - 20-2-103. Construction of Lines.
  - 20-2-104. Liability.
  - 20-2-105. Written Acceptance.
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#### **20-2-101. RIGHT OF FRANCHISE.**

There is hereby granted to Utah Power & Light Company, its successors and assigns (herein called the "Grantee"), the right, privilege or franchise, until July 1, 2030, to construct, maintain and operate in the present and future, streets, alleys and public places in the City, and its successors, electric light and power lines, together with all the necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, and telegraph and telephone lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes.

#### **20-2-102. POLES AND TOWERS.**

Poles and towers shall be erected so as to interfere as little as possible with traffic over the streets and alleys. The location of all poles, towers and conduits shall be fixed under the supervision of the governing authorities of the City, but not as unreasonable so as to interfere with the proper operation of the lines.

#### **20-2-103. CONSTRUCTION OF LINES.**

All lines constructed under this grant shall be constructed in accordance with established practices with respect to electrical construction, including standards of the National Electric Safety Code and National Electric Code.

#### **20-2-104. LIABILITY.**

The City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its lines and appurtenances hereunder, and the acceptance of this franchise shall be deemed an agreement on the part of the Grantee, its successors and assigns, to indemnify the City and hold it harmless against any and all liability, loss, cost, damage, or expense which may accrue to the City by reason of the neglect, default or misconduct of the Grantee in the construction, operation, or maintenance of its lines and appurtenances hereunder.

#### **20-2-105. WRITTEN ACCEPTANCE.**

The Grantee shall file its written acceptance of this franchise with the City Recorder 30 days after its passage.

## **CHAPTER 20-3 TRANSMISSION PIPELINES**

### Sections:

20-3-101.	Purpose.
20-3-102.	Applicability.
20-3-103.	Definitions.
20-3-104.	Excavation Permit Required.
20-3-105.	Access.
20-3-106.	Construction under Roadways.
20-3-107.	Repealed.
20-3-108.	Pipeline Location.
20-3-109.	Subdivision.
20-3-110.	Recovery of Costs by City.
20-3-111.	Construction, Maintenance, Repair or Relocation.

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### **20-3-101. PURPOSE.**

It is the purpose of this Chapter to address the health, safety and welfare concerns surrounding the hazards of a gas transmission pipeline located in the City. These regulations are designed to improve the level of public safety and at the same time safeguard the integrity of the pipeline. A basic assumption is that the main cause of major pipeline failures is due to third party damage to the pipeline during construction and servicing activities. These guidelines are intended to reduce the potential for unauthorized and improper construction activities on the pipeline right-of-way. These provisions do not relieve any person or persons from any obligation under any other regulation imposed by West Valley City Code, state law or federal law, nor do they impose any liability upon the City.

### **20-3-102. APPLICABILITY.**

This Chapter shall apply to any new pipeline construction and to subdivisions, buildings, or additions to buildings proposed to be located on property within 100 feet of the pipeline.

### **20-3-103. DEFINITIONS.**

- (1) Transmission Pipeline or Pipeline means:
  - a. Any pipeline with a nominal diameter of 6" or more, located in the City that is used to transport hazardous liquids. However, it does not include pipelines used to transport hazardous liquids by gravity or pipes used to transport or store hazardous liquids within a refinery, storage or manufacturing facility.
  - b. A pipeline operated at a pressure of more than 500 psi that carries natural gas.
- (2) Surface Use means the activity or the improvements occurring on the surface of a parcel of land.
- (3) Easement means an interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

**20-3-104. EXCAVATION PERMIT REQUIRED.**

- (1) Except as otherwise provided in this Chapter, an excavation permit shall be required before beginning construction or maintenance on any pipeline in the City. Application for the permit shall be made upon forms provided by the City. The completed application shall be filed with the Public Works Department and shall be accompanied by the following:
  - a. Three copies of the application and a center line survey showing the proposed right-of-way and the exact location of the pipeline within that right-of-way. One copy each shall be submitted to the City's Community Development Department, Fire Department and Public Works Department.
  - b. Identification of the location and extent of topographical or geographical problems in relation to the pipeline, such as faults, waterways, rights-of-way and other like problems. Show how these problems will be addressed prior to construction.
  - c. A 24-hour emergency contact number and the names of pipeline personnel to notify in case of emergency.
- (2) The following items shall be provided to the City at completion or prior to operation, whichever occurs first:
  - a. Three copies of an as-built survey showing the actual location of the right-of-way and the exact location of the pipeline within the right-of-way.
  - b. An emergency response plan submitted to and approved by the Fire Department. The plan shall include:
    - i. suggested alternate approach routes, if normal routes to exposed areas are blocked by incident or by traffic;
    - ii. a medical mass casualty plan to deal with pipeline associated incidents;
    - iii. an evacuation plan for all exposures adjacent to the pipeline;
    - iv. complete information on the products to be piped and the characteristics of those products;
    - v. evidence that the pipeline is a part of the "One Call" system protecting against construction incidents in the vicinity of the pipeline; and
    - vi. development of a mass media package that will be instituted when a gas pipeline incident occurs, should a gas pipeline incident occur.
  - c. Four copies of a plan for public awareness of the pipeline.
  - d. Four copies of a damage prevention program required under US Department of Transportation, 1983, Section 192.614.
  - e. An application fee as determined by the City's Consolidated Fee Schedule.
  - f. An impact fee where required. (Must be paid prior to the issuance of the permit.)

**20-3-105. ACCESS.**

The pipeline right-of-way shall be kept clear and unobstructed, except for uses which are temporary in nature that may be removed quickly during emergency situations. The storage of any explosive or combustible materials shall not be located in the right-of-way. The pipeline shall be properly signed for easy identification. Where fences are erected over or around the pipeline, they shall be built in such a manner as to allow ready access to the pipeline for emergency vehicles and pipeline maintenance.



**20-3-106. CONSTRUCTION UNDER ROADWAYS.**

That portion of the pipeline that passes underneath a roadway shall be required to meet the specifications required by the Utah Department of Transportation for pipelines going under state rights-of-way. The specifications shall require the approval of the City Engineer. Any damage to the roadway shall be repaired at the expense of the pipeline company, and construction shall be coordinated with the City Engineer and be completed as quickly as possible so as to prevent the unnecessary restriction of traffic or public access to the right-of-way.

**20-3-107. REPEALED.**

**(Ord. No. 97-30 Repealed 07/01/1997)**

**20-3-108. PIPELINE LOCATION.**

At the time of application for a building permit, site plan review or preliminary plat, the applicant shall provide a scaled site plan that shows the location of any pipeline within 100 feet of the applicant's site. The elevation of the pipeline shall be shown in a site plan and on a grading plan, when such plan is required to be submitted.

**20-3-109. SUBDIVISION.**

Wherever practical, subdivisions shall be designed with any existing pipeline along the rear lot lines.

**20-3-110. RECOVERY OF COSTS BY CITY.**

Any person that causes an extraordinary expense to the City in preparation, response, litigation or recovery from pipeline-associated emergency services may be held responsible for the cost of said services.

**20-3-111. CONSTRUCTION, MAINTENANCE, REPAIR OR RELOCATION.**

The pipeline company shall obtain an excavation permit from the West Valley City Public Works Department for any construction, maintenance, repair or relocation of the pipeline or pipeline facilities within any right-of-way, at least 24 hours before commencing such activities. This requirement is expressly waived for construction, maintenance or repairs made in response to an emergency.

## **CHAPTER 20-4 WEST VALLEY CITY ELECTRIC POWER SYSTEM**

Sections:

- 20-4-101. Electric Power System Established.
- 20-4-102. Functions of Electric Power System.
- 20-4-103. Rates and Regulation of Electric Power System.

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### **20-4-101. ELECTRIC POWER SYSTEM ESTABLISHED.**

There is hereby created the West Valley City Electric Power System, hereinafter referred to as the "Electric Power System." Initially, the area to be served by the Electric Power System shall include the property annexed to the City as described in Ordinance No. 88-17, hereinafter referred to as the "Service Area." Only new customers, i.e., those not currently serviced by an electric public utility, shall be connected to the new System in the Service Area.

**(Ord. No. 94-79 Enacted 08/15/1994)**

### **20-4-102. FUNCTIONS OF ELECTRIC POWER SYSTEM.**

The Electric Power System shall be under the control and supervision of the Community and Economic Development Director or his or her designee. The Electric Power System shall be maintained, operated, and improved so as to provide safe, reliable, and efficient service at reasonable and just rates in the Service Area. The Director shall:

- (1) Direct and supervise all activities of the Electric Power System and report to the City Manager.
- (2) Coordinate and assist with the construction and maintenance of distribution facilities, substations, and metering equipment.
- (3) Plan and implement operation, maintenance, and capital improvement projects, including coordination of contract services and budgets.
- (4) Direct and supervise customer service activities, including meter reading, billing, and related services.
- (5) Administer matters relating to the existing power supply, transmission, transformation, and operation and maintenance agreements. Assist in developing future agreements as necessary.
- (6) Oversee economic analyses, rate studies, and power supply planning.
- (7) Represent the Electric Power System before administrative and public organizations, as authorized by the City Manager or City Council.
- (8) Perform other duties as needed.

**(Ord. No. 94-79 Enacted 08/15/1994)**

### **20-4-103. RATES AND REGULATION OF ELECTRIC POWER SYSTEM.**

The City Council shall have responsibility for adoption of Rate Schedules and Electric Service Regulations for the Electric Power System.

**(Ord. No. 94-79 Enacted 08/15/1994)**

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## **CHAPTER 20-5 TELECOMMUNICATIONS RIGHTS-OF-WAY ORDINANCE**

**Sections:**

20-5-101.	Declaration of Finding and Intent.
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20-5-103.	Excluded Activity.
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## **20-5-101. DECLARATION OF FINDING AND INTENT.**

- (1) Findings Regarding Rights-of-Way. West Valley City finds that the rights-of-way within the City:
  - a. Are critical to the travel and transport of persons and property in the business and social life of the City;
  - b. Are intended for public uses and must be managed and controlled consistent with that intent;
  - c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
  - d. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the rights-of-way.
- (2) Finding Regarding Compensation. The City finds that the City should receive fair and reasonable compensation for use of the rights-of-way.
- (3) Finding Regarding Local Concern. The City finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights-of-way, municipal franchising, and vital business and community service, which are of local concern.
- (4) Finding Regarding Promotion of Telecommunications Services. The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscriminatory basis, in a manner that is responsive to community and public interest, and to assure availability for municipal, educational, and community services.
- (5) Findings Regarding Franchise Standards. The City finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

- a. Fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;
  - b. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;
  - c. Fully protects the public interests and the City from any harm that may flow from such commercial use of rights-of-way;
  - d. Protects the police powers and rights-of-way management authority of the City, in a manner consistent with federal and state law;
  - e. Otherwise protects the public interests in the development and use of the City infrastructure;
  - f. Protects the public's investment in improvements in the rights-of-way; and
  - g. Ensures that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting telecommunications services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 96-104].
- (6) Power to Manage Rights-of-Way. The City adopts this Telecommunications Ordinance pursuant to its power to manage the rights-of-way, pursuant to common law, the Utah Constitution, and statutory authority, and receive fair and reasonable compensation for the use of rights-of-way by providers as expressly set forth by Section 253 of the Act.

**(Ord. No. 97-74 Enacted 12/29/1997; Ord. 00-51 Amended 09/05/2000)**

## **20-5-102. SCOPE OF ORDINANCE.**

This Ordinance shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights-of-way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This Ordinance shall apply to all future providers and to all providers in the City prior to the effective date of this Ordinance, whether operating with or without a franchise as set forth in Section 20-5-1202.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-103. EXCLUDED ACTIVITY.**

- (1) Cable TV. This Ordinance shall not apply to cable television operators otherwise regulated by Title 20, Chapter 1, of the West Valley City Municipal Code.
- (2) Wireless Services. This Ordinance shall not apply to personal wireless service facilities.
- (3) Provisions Applicable to Excluded Providers. Providers excused by other law that prohibits the City from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

**(Ord. No. 97-74 Enacted 12/29/1997; Ord. 00-51 Amended 09/05/2000)**

## **20-5-200P PART 2 – DEFINED TERMS**

### **20-5-201. DEFINITIONS.**

For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense; words in the single number include the plural number; words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (1) "Application" means the process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights-of-way of all, or a part, of the City. An application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by a provider to the City concerning the construction of a telecommunications system over, under, on or through the rights-of-way; the telecommunications services proposed to be provided in the City by a provider; and any other matter pertaining to a proposed system or service.
- (2) "City" means West Valley City, Utah.
- (3) "Completion Date" means the date that a provider begins providing services to customers in the City.
- (4) "Construction Costs" means all costs of constructing a system, including make-ready costs, other than engineering fees, attorney's or accountant's fees, or other consulting fees.
- (5) "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than thirty-five percent (35%) of any provider (which person or group of persons is hereinafter referred to as "controlling person"). "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.
- (6) "FCC" means the Federal Communications Commission, or any successor thereto.
- (7) "Franchise" means the rights and obligation extended by the City to a provider to own, lease, construct, maintain, use, or operate a system in the rights-of-way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:
  - a. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
  - b. Any other permit, agreement, or authorization required in connection with operations on rights-of-way or public property, including, without limitation, permits and agreements for placing devices on or in poles; for conduits or other structures, whether owned by the City or a private entity; or for excavating or performing other work in or along the rights-of-way.
- (8) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a franchise will be exercised.
- (9) "Gross Revenue" includes all revenues of a provider that may be included as gross revenue within the meaning of Section 26, Title 11, Utah Code Annotated, 1953, as amended. In the case of any provider not covered within the ambit of Chapter 26, Title 11, Utah Code Annotated, the definition of "gross revenue" shall be that set forth in the franchise agreement.

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- (10)"Infrastructure Provider" means a person providing to another, for the purpose of providing telecommunications services to customers, all or part of the necessary system which uses the rights-of-way.
- (11)"Open Video Service" means any video programming services provided to any person, through the use of rights-of-way, by a provider that is certified by the FCC to operate an open video system pursuant to sections 651, et seq., of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the system used.
- (12)"Open Video System" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying, or distributing open video services to or from subscribers or locations within the City.
- (13)"Operator" means any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.
- (14)"Ordinance" or "Telecommunications Ordinance" means this Telecommunications Ordinance concerning the granting of franchises in and by the City for the construction, ownership, operation, use, or maintenance of a telecommunications system.
- (15)"Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.
- (16)"Personal Wireless Services Facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS services that do not install any system or portion of a system in the rights-of-way.
- (17)"Provider" means an operator, infrastructure provider, resaler, or system lessee.
- (18)"PSC" means the Public Service Commission, or any successor thereto.
- (19)"Resaler" refers to any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.
- (20)"Rights-of-Way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.
- (21)"Signal" means any transmission or reception of electronic, electrical, light, or laser or radio frequency energy or optical information in either analog or digital format.
- (22)"System Lessee" refers to any person that leases a system or a specific portion of a system to provide services.
- (23)"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.
- (24)"Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers, and all other electronic devices, equipment, wire, and appurtenances owned, leased, or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data, and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.
- (25)"Telecommunications Service(s)" or "Services" means any telecommunications or communications services provided by a provider within the City that the provider is authorized to provide under federal, state, and local law, and any equipment and/or facilities required for and integrated with the services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended

by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521, et seq.), and the Telecommunications Act of 1996. Telecommunications system or systems also includes an open video system.

(26)"Wire" means fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

**(Ord. No. 97-74 Enacted 12/29/1997; Ord. No. 00-51 Amended 09/05/2000)**

## **20-5-300P PART 3 – FRANCHISE REQUIRED**

### **20-5-301. NON-EXCLUSIVE FRANCHISE.**

The City is empowered and authorized to issue non-exclusive franchises governing the installation, construction, and maintenance of systems in the City's rights-of-way, in accordance with the provisions of this Ordinance. The franchise is granted through a franchise agreement entered into between the City and provider.

**(Ord. No. 97-74 Enacted 12/29/1997)**

### **20-5-302. EVERY PROVIDER MUST OBTAIN.**

Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights-of-way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.

**(Ord. No. 97-74 Enacted 12/29/1997)**

### **20-5-303. NATURE OF GRANT.**

A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right to occupy rights-of-way on a non-exclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned, or subleased, except as may be expressly provided in the Franchise Agreement. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the City's property. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.

**(Ord. No. 97-74 Enacted 12/29/1997; Ord. No. 00-56 Amended 10/17/2000)**



**20-5-304. CURRENT PROVIDERS.**

Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date of this Ordinance shall request issuance of a franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of Section 20-5-904.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-305. NATURE OF FRANCHISE.**

The franchise granted by the City under the provisions of this Ordinance shall be a non-exclusive franchise providing the right and consent to install, repair, maintain, remove, and replace its system on, over, and under the rights-of-way in order to provide services.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-306. REGULATORY APPROVAL NEEDED.**

Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations, or licenses for the offering or provision of such services from the appropriate federal, state, and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations, or licenses.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-307. TERM.**

No franchise issued pursuant to this Ordinance shall have a term of less than five years or greater than 15 years. Each franchise shall be granted in a non-discriminatory manner.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-400P PART 4 – COMPENSATION AND OTHER PAYMENTS****20-5-401. COMPENSATION.**

As fair and reasonable compensation for any franchise granted pursuant to this Ordinance, a provider shall have the following obligations:

- (1) Application Fee. In order to offset the cost to the City to review an application for a franchise and in addition to all other fees, permits, or charges, a provider shall pay to the City, at the time of application, \$500 as a non-refundable application fee.
- (2) Franchise Fees. The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the City.

- (3) Excavation Permits. The provider shall also pay fees required for an excavation permit as provided in Title 19, Chapter 2, Part 3, West Valley City Code, and Title 1, Chapter 2, West Valley City Code.

**(Ord. No. 97-74 Enacted 12/29/1997)**

#### **20-5-402. TIMING.**

Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within 45 days of the close of each calendar month.

**(Ord. No. 97-74 Enacted 12/29/1997)**

#### **20-5-403. FEE STATEMENT AND CERTIFICATION.**

Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

**(Ord. No. 97-74 Enacted 12/29/1997)**

#### **20-5-404. FUTURE COSTS.**

A provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider-initiated renegotiation, or amendment of this Ordinance or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

**(Ord. No. 97-74 Enacted 12/29/1997)**

#### **20-5-405. TAXES AND ASSESSMENTS.**

To the extent taxes or other assessments are imposed by taxing authorities, other than the City, on the use of the City property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

**(Ord. No. 97-74 Enacted 12/29/1997)**

#### **20-5-406. INTEREST ON LATE PAYMENTS.**

In the event that any payment is not actually received by the City on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-407. NO ACCORD AND SATISFACTION.**

No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-408. NOT IN LIEU OF OTHER TAXES OR FEES.**

The fee payment is not a payment in lieu of any tax, fee, or other assessment, except as specifically provided in this Ordinance or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City-owned poles are not waived and remain applicable.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-409. CONTINUING OBLIGATION AND HOLDOVER.**

In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-410. COSTS OF PUBLICATION.**

A provider shall assume any publication costs associated with its franchise that may be required by law.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-500P PART 5 – FRANCHISE APPLICATIONS****20-5-501. FRANCHISE APPLICATION.**

To obtain a franchise to construct, own, maintain, or provide services through any system within the City; to obtain a renewal of a franchise granted pursuant to this Ordinance; or to obtain the City approval of a transfer of a franchise, as provided in Subsection 20-5-701(2), granted pursuant to this Ordinance, an application must be filed with the City on the form attached to this Ordinance as Exhibit A, which is hereby incorporated by reference. The application form may be changed by the City Manager so long as such changes request information that is consistent with this Ordinance. Such application form, as amended, is incorporated by reference.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-502. APPLICATION CRITERIA.**

In making a determination as to an application filed pursuant to this Ordinance, the City may request, but shall not be limited to, the following from the provider:

- (1) A copy of the order from the PSC granting a Certificate of Convenience and Necessity, if any is necessary for provider's offering of services within the State of Utah;
- (2) Certification of the provider's financial ability to compensate the City for the provider's intrusion, maintenance, and use of the rights-of-way during the franchise term proposed by the provider;
- (3) Provider's agreement to comply with the requirements of Part 6 of this Ordinance.

**(Ord. No. 97-74 Enacted 12/29/1997; Ord. No. 00-51 Amended 09/05/2000)**

**20-5-503. FRANCHISE DETERMINATION.**

The City, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-600P PART 6 – CONSTRUCTION AND TECHNICAL REQUIREMENTS****20-5-601. GENERAL REQUIREMENT.**

No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the City or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with City utilities. A provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the rights-of-way.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-602. QUALITY.**

All work involved in the construction, maintenance, repair, upgrade, and removal of the system shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety, or welfare or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-603. LICENSES AND PERMITS.**

A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, maintain, upgrade, or repair the system, including, but not limited to, any necessary approvals from persons and/or the City to use private property, easements, poles, and conduits. A provider shall obtain any required permit, license, approval, or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval, or authorization is required.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-604. RELOCATION OF THE SYSTEM.**

- (1) **New Grades or Lines.** If the grades or lines of any rights-of-way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the excavation ordinance.
- (2) **The City Authority to Move System in Case of an Emergency.** The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the system and appurtenances on, over, or under the rights-of-way of the City, in which event the City shall not be liable therefor to a provider. The City shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than, the next business day following any action taken under this Section. Notice shall be given as provided in Section 20-5-1104.
- (3) **A Provider Required to Temporarily Move System for Third Party.** A provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the City for any such movement of its systems.
- (4) **Rights-of-Way Change - Obligation to Move System.** When the City is changing a rights-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights-of-way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an excavation permit.
- (5) **Protect Structures.** In connection with the construction, maintenance, repair, upgrade, or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over, or under the rights-of-way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other rights-of-way of the City involved in the construction, maintenance, repair, upgrade, or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.

- (6) No Obstruction. In connection with the construction, maintenance, upgrade, repair, or removal of the system, a provider shall not unreasonably obstruct the rights-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from, or within the City without the prior consent of the appropriate authorities.
- (7) Safety Precautions. A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel, and suitable and sufficient lighting and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state, and local requirements, including, but not limited to, the National Electric Safety Code.
- (8) Repair. After written reasonable notice to the provider, unless, in the sole determination of the City, an eminent danger exists, any rights-of-way within the City which are disturbed or damaged during the construction, maintenance, or reconstruction by a provider of its system may be repaired by the City at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-ways intruded upon. The provider shall, within 30 days after receipt of the statement, pay to the City the entire amount thereof.
- (9) System Maintenance. A provider shall:
  - a. Install and maintain all parts of its system in a non-dangerous condition throughout the entire period of its franchise.
  - b. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state, and local laws or regulations.
  - c. At all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the rights-of-way.
- (10) Trimming of Trees. A provider shall have the authority to trim trees, in accordance with all applicable utility, ordinance, and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-700P PART 7 – FRANCHISE AND LICENSE TRANSFER**

### **20-5-701. NOTIFICATION OF SALE.**

- (1) Notification and Election. When a provider is the subject of a sale, transfer, lease, assignment, or sublease or is disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:
  - a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
  - b. The successor entity's application in compliance with Part 5 of this Ordinance.
- (2) Transfer of Franchise. Upon receipt of a notification and certification in accordance with Subsection 20-5-701(1)(a), the City designee, as provided in Subsection 20-5-901(1), shall send notice affirming the transfer of the franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the franchise

agreement, it may require an application for the transfer. The application shall comply with Part 5 of this Chapter.

- (3) If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 20-5-701, and the City has good cause to believe that the successor entity may not comply with this Ordinance or the franchise agreement, it may require an application. The application shall comply with Part 5.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-702. EVENTS OF SALE.**

The following events shall be deemed to be a sale, assignment, or other transfer of the franchise requiring compliance with Section 20-5-701:

- (1) The sale, assignment, or other transfer of all or a majority of a provider's assets to another person;
- (2) The sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a provider by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in a provider;
- (3) The issuance of additional capital stock or partnership, membership, or other equity interest by a provider so as to create a new controlling interest in such a provider; or
- (4) The entry by a provider into an agreement with respect to the management or operation of such provider or its system.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-800P PART 8 – OVERSIGHT AND REGULATION**

### **20-5-801. INSURANCE, INDEMNITY, AND SECURITY.**

Prior to the execution of a franchise, a provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the franchise. A provider shall also indemnify the City as set forth in the franchise.

**(Ord. No. 97-74 Enacted 12/29/1997)**

### **20-5-802. OVERSIGHT.**

The City shall have the right to oversee, regulate, and inspect periodically the construction, maintenance, and upgrade of the system, and any part thereof, in accordance with the provisions of the franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures, and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the term, that a provider is in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-803. MAINTAIN RECORDS.**

A provider shall at all times maintain:

- (1) On file with the City, a full and complete set of plans, records, and "as-built" hard copy maps, and, to the extent the maps are placed in an electronic format, they shall be made available, in electronic format compatible with the City's existing GIS system, showing all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks, which shall include annotations of all rights-of-ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.
- (2) Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the City at all times to determine whether a provider is in compliance with the franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles, shall be deemed to be acceptable under this Section.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-804. CONFIDENTIALITY.**

If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state, or local law, upon proper request by a provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a provider notifies the City of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-805. PROVIDER'S EXPENSE.**

All reports and records required under this Ordinance shall be furnished at the sole expense of a provider, except as otherwise provided in this Ordinance or a franchise.

**(Ord. No. 97-74 Enacted 12/29/1997)**



**20-5-806. RIGHT OF INSPECTION.**

For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not inspect or audit the books and records of the provider more often than annually. The provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within 30 calendar days of written notice, it being agreed that the City may accept any amount offered by the provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-900P PART 9 – RIGHTS OF CITY****20-5-901. ENFORCEMENT AND REMEDIES.**

- (1) Enforcement - City Designee. The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the City Manager, is authorized to give any notice required by law or under any franchise agreement.
- (2) Enforcement Provision. Any franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-902. FORCE MAJEURE.**

In the event a provider's performance of any of the terms, conditions, or obligations required by this Ordinance or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused, and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-903. EXTENDED OPERATION AND CONTINUITY OF SERVICES.**

- (1) Continuation After Expiration. Upon either expiration or revocation of a franchise granted pursuant to this Ordinance, the City shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six months

from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this Ordinance and the franchise granted pursuant to this Ordinance.

- (2) Continuation by Incumbent Local Exchange Carrier. If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-904. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY.**

- (1) Abandoned System. In the event that:
  - a. The use of any portion of the system is discontinued for a continuous period of 12 months, and 30 days after no response is received to written notice from the City to the last known address of provider;
  - b. Any system has been installed in the rights-of-way without complying with the requirements of this Ordinance or franchise; or
  - c. The provisions of Section 20-5-305 are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.
- (2) Removal of Abandoned System. The City, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system or portion thereof, directly constructed, operated, or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness. In removing its plant, structures, and equipment, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments, and poles prior to and after removal. The liability, indemnity, and insurance provisions of this Ordinance and any security fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this Section.
- (3) Transfer of Abandoned System to City. Upon abandonment of any system in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned system.
- (4) Removal of Above-Ground System. At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension, or transfer, the City shall have the right to require a provider to remove, at its expense, all above-ground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than 180 days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.
- (5) Leaving Underground System. Notwithstanding anything to the contrary set forth in this Ordinance, a provider may abandon any underground system in place so long as it does not

materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other person.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-1000 PART 10 – OBLIGATION TO NOTIFY**

### **20-5-1001. PUBLICIZING WORK.**

Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **20-5-1100 PART 11 – GENERAL PROVISIONS**

### **20-5-1101. CONFLICTS.**

In the event of a conflict between any provision of this Ordinance and a franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the franchise is entered into shall control.

**(Ord. No. 97-74 Enacted 12/29/1997)**

### **20-5-1102. SEVERABILITY.**

If any provision of this Ordinance is held by any federal, state, or local court of competent jurisdiction to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law, the provision in question shall return to full force and effect and shall again be binding on the City and the provider, provided that the City shall give the provider 30 days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

**(Ord. No. 97-74 Enacted 12/29/1997)**

### **20-5-1103. NEW DEVELOPMENTS.**

It shall be the policy of the City to liberally amend this Ordinance, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1104. NOTICES.**

All notices from a provider to the City required under this Ordinance or pursuant to a franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the City Manager. A provider shall provide in any application for a franchise the identity, address, and phone number to receive notices from the City. A provider shall immediately notify the City of any change in its name, address, or telephone number.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1105. EXERCISE OF POLICE POWER.**

To the full extent permitted by applicable law, either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1200PART 12 – FEDERAL, STATE, AND CITY JURISDICTION****20-5-1201. CONSTRUCTION.**

This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1202. ORDINANCE APPLICABILITY.**

This Ordinance shall apply to all franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date of this Ordinance and to a provider providing services, without a franchise, prior to the effective date of this Ordinance.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1203. OTHER APPLICABLE ORDINANCES.**

A provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all providers shall comply with the City zoning and other land use requirements.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1204. CITY FAILURE TO ENFORCE.**

A provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

**(Ord. No. 97-74 Enacted 12/29/1997)**

**20-5-1205. CONSTRUED ACCORDING TO UTAH LAW.**

This Ordinance and any franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

**(Ord. No. 97-74 Enacted 12/29/1997)**

## **CHAPTER 20-6**

### **MOBILE TELEPHONE SERVICE REVENUE ACT**

**Sections:**

- 20-6-101. Definitions.
- 20-6-102. Levy of Tax.
- 20-6-103. Rate.
- 20-6-104. Rate limitation and exemption therefrom.
- 20-6-105. Effective date of tax levy.
- 20-6-106. Interlocal agreement for collection of the tax.
- 20-6-107. Repeal of inconsistent taxes and fees.
- 20-6-108. Procedure for taxes erroneously recovered from customers.

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#### **20-6-101. DEFINITIONS.**

As used in this Ordinance:

- (1) "Commission" means the Utah State Tax Commission.
- (2) Subject to Subsections (2) (b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
  - a. For purposes of this Ordinance, "customer" means:
    - i. the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
    - ii. if the end user is not the person described in Subsection (2)(b)(i), the end user of telecommunications service.
  - b. "Customer" does not include a reseller:
    - i. of telecommunications service; or
    - ii. for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.
- (3) "End user" means the person who uses a telecommunications service.
  - a. For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.
- (4) "Gross Receipts attributed to the municipality" means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code section 59-12-207.
- (5) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:
  - a. a tax, fee, or charge:
    - i. imposed by a governmental entity;
    - ii. separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
    - iii. imposed only on a telecommunications provider;

- b. sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or
  - c. interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.
- (6) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- (7) "Municipality" means West Valley City.
- (8) "Place of primary use":
  - a. for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:
    - i. the residential street address of the customer; or
    - ii. the primary business street address of the customer; or
  - b. for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- (9) Notwithstanding where a call is billed or paid, "service address" means:
  - a. if the location described in this Subsection (9)(a) is known, the location of the telecommunications equipment:
    - i. to which a call is charged; and
    - ii. from which the call originates or terminates;
  - b. if the location described in Subsection (9)(a) is not known but the location described in this Subsection (9)(b) is known, the location of the origination point of the signal of the telecommunications service first identified by:
    - i. the telecommunications system of the telecommunications provider; or
    - ii. if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or
  - c. if the locations described in Subsection (9)(a) or (b) are not known, the location of a customer's place of primary use.
- (10) Subject to Subsections (9)(b) and (9)(c), "telecommunications provider" means a person that:
  - a. owns, controls, operates, or manages a telecommunications service; or
  - b. engages in an activity described in Subsection (9)(a)(i) for the shared use with or resale to any person of the telecommunications service.
- (11) A person described in Subsection (9)(a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:
  - a. that person; or
  - b. the telecommunications service that the person owns, controls, operates, or manages.
- (12) "Telecommunications provider" does not include an aggregator as defined in Utah Code Section 54-8b-2.
- (13) "Telecommunications service" means:
  - a. telephone service, as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
  - b. mobile telecommunications service, as defined in Utah Code Section 59-12-102:
    - i. that originates and terminates within the boundaries of one state; and
    - ii. only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

**(Ord. No. 00-62 Enacted 11/07/2000, Effective 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004)**

## **20-6-102 LEVY OF TAX.**

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to this municipality.

**(Ord. No. 00-62 Enacted 11/07/2000, Effective: 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004)**

## **20-6-103 RATE.**

The rate of the tax levy shall be 3.5% of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality as set forth in the Utah Code §10-1-407, as amended.

**(Ord. No. 00-62 Enacted 11/07/2000, Effective: 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004; Ord. No. 14-36 Amended 08/29/2014)**

## **20-6-104 RATE LIMITATION AND EXEMPTION THEREFROM.**

This rate of this levy shall not exceed 4% of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:

- (1) a municipal general election;
- (2) a regular general election; or
- (3) a local special election.

**(Ord. No. 00-62 Enacted 11/07/2000, Effective: 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004)**

## **20-6-105 EFFECTIVE DATE OF TAX LEVY.**

This tax shall be levied beginning July 1, 2004.

**(Ord. No. 00-62 Enacted 11/07/2000 Effective: 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004)**

## **20-6-106 INTERLOCAL AGREEMENT FOR COLLECTION OF THE TAX.**

On or before the effective date of the Ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission, as described in Utah Code § 10-1-405, for the collection, enforcement, and administration of this municipal telecommunications license tax.

**(Ord. No. 00-62 Enacted 11/07/2000 Effective: 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004)**



**20-6-107 REPEAL OF INCONSISTENT TAXES AND FEES.**

Any tax or fee previously enacted by this municipality under authority of Utah Code § 10-1-203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation, is hereby repealed.

Nothing in this Ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code § 72-7-102 and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way; nor does this Ordinance limit the municipality's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this Ordinance and to locate telecommunications facilities, as defined in Utah code § 72-7-108, in this municipality.

**(Ord. No. 00-62 Enacted 11/07/2000, Effective: 01/01/2001; Ord. No. 04-32 Repealed and Replaced 06/15/2004)**

**20-6-108 PROCEDURE FOR TAXES ERRONEOUSLY RECOVERED FROM CUSTOMERS.**

A customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer municipal telecommunications license taxes authorized by this part:

- (1) unless the customer provides the telecommunications provider with written notice that:
  - a. the customer requests a refund of the amounts paid by the customer pursuant to Utah Code §10-1-403(2); and
  - b. contains the information necessary to determine the validity of the request described in Subsection (1)(a); and
- (2) before 60 days from the day on which the telecommunications provider receives the written notice required by Subsection (1).

**(Ord. No. 00-62 Enacted 11/07/2000, Effective: 01/01/2001; Ord. No. 04-32 Amended 06/15/2004)**

## **CHAPTER 20-7 STORM WATER UTILITY**

**Sections:**

20-7-101.	Purpose.
20-7-102.	Definitions.
20-7-103.	Storm Water Utility Created.
20-7-104	Ownership of City Storm Sewer Facilities and Assets.
20-7-105.	Utility Administration.
20-7-106.	Service Charge Imposed.
20-7-107	System of Rates and Charges.
20-7-108	Billing and Collection.
20-7-109	Appeal of Charges.
20-7-110.	Annual Report to Storm Water Utility Customers.

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### **20-7-101. PURPOSE.**

The City finds and declares that absent effective maintenance, operation, regulation and control, existing storm water drainage conditions in all areas within the City constitute a potential hazard to the health, safety and general welfare of the City. The City Council further finds that natural and man-made storm sewer facilities and conveyances constitute a storm sewer system and that effective improvement, regulation, and control of storm water through formation by the City, of a Storm Water Utility, requires the transfer to the Utility of all storm sewer facilities and conveyances and related rights belonging to the City.

**(Ord. No. 01-05 Enacted 02/06/2001)**

### **20-7-102. DEFINITIONS.**

For the purpose of this Chapter, the following terms phrases and words shall mean:

- (1) "BMP" means Best Management Practices to improve storm water quality as defined in West Valley City's "Guidance Document for Storm Water Management."
- (2) "City" means West Valley City, a municipal corporation of the State of Utah.
- (3) "County" means Salt Lake County
- (4) "Council" means West Valley City Council
- (5) "Customer" or "Person" means any individual; public or private corporation and its officers; partnership; association; firm; trustee; executor of an estate; the State or its departments, institutions, bureaus, agencies; county; city; political subdivision; or any other governmental or legal entity recognized by law.
- (6) "Director" means the Public Works Director or the Director's designee.
- (7) "Equivalent Residential Unit (ERU)" means a unit equal to 2,830 square feet of impervious surface area. This is based on an average single-family residential parcel, which has an impervious surface area of 2,830 square feet. Total ERU's are calculated by dividing total square feet of impervious surface by 2,830 (one ERU), rounded to the nearest whole number.
- (8) "Guidance Document for Storm Water Management" means the document described in Section 18-1-102 of Title 18, Storm Water Management Ordinance.

- (9) "Impervious Surface" means a parcel's hard surface area that causes water to run off its surface in quantities or speeds greater than under natural conditions. Some examples of impervious surfaces are rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, and gravel that has been subject to surface traffic, including compacted gravel surfaces.
- (10) "Mitigation" means on-site facilities or practices which reduce storm water quantity or improve storm water quality.
- (11) "Parcel" means the smallest, separately segregated unit of land having an owner. A parcel has boundaries and surface area, and is documented with a property number by the county.
- (12) "Developed Parcel" means any parcel whose surface has been altered by grading, filling, or construction of any improvement.
- (13) "National Pollutant Discharge Elimination System (NPDES) Storm Water Regulations" means the provisions of the Federal Clean Water Act establishing specific permit requirements for the control of storm water discharge.
- (14) "Single-Family Residential Parcel" means any parcel of land containing a single-family dwelling unit.
- (15) "Storm Drainage Master Plan" means the plan described in Section 18-1-106 of Title 18, Storm Water Management Ordinance.
- (16) "Storm Water" means water produced by storms, surface drainage, snow and ice melt, and other water handled by the storm sewer drainage system.
- (17) "Storm Water Management Permit" means the permit required in Chapter 2 of Title 18, Storm Water Management Ordinance.
- (18) "Storm Sewer Facilities" means any facility, improvement, development, or property made for controlling storm water quantity and quality.
- (19) "Storm Sewer Drainage System" means all man-made storm sewer facilities and conveyances, and natural storm water systems owned or maintained by the City that store, control, treat, and/or convey storm water.
- (20) "Storm Water Utility" or "Utility" means the utility created by this Ordinance, which operates, maintains, regulates, and improves storm sewer facilities and programs within West Valley City.
- (21) "Undeveloped Parcel" means any parcel that has no impervious area.

**(Ord. No. 01-05 Enacted 02/06/2001; Ord. No. 01-25 Amended 05/03/2001; Ord. No. 05-23 Amended 05/17/2005; Ord. No. 10-32 Amended 10/22/2010)**

### **20-7-103. STORM WATER UTILITY CREATED.**

There is hereby created and established a Storm Water Utility and service charge rate structure. The Utility will have regulatory authority and responsibility for planning, design, construction, maintenance, administration and operation of all City storm sewer conveyances and facilities.

**(Ord. No. 01-05 Enacted 02/06/2001)**

### **20-7-104. OWNERSHIP OF CITY STORM SEWER FACILITIES AND ASSETS.**

The City Manager, shall determine which of the City's storm drainage assets will be transferred to the Utility. Until such transfer, the Utility shall operate, maintain, and improve all existing City storm drainage facilities used for the conveyance of storm waters, through, under or over lands or watercourses, beginning at a point where the storm waters first enter the storm sewer system of the

City and ending in each instance at a point where the storm waters exit from the system. Storm water facilities do not include government-owned streets or those storm sewer facilities operated and maintained by, or for, the Utility, the county, or the State of Utah.

**(Ord. No. 01-05 Enacted 02/06/2001)**

## **20-7-105. UTILITY ADMINISTRATION.**

The Storm Water Utility shall be administered by the City's Public Works Director.

**(Ord. No. 01-05 Enacted 02/06/2001; Ord. No. 12-26 Amended 06/28/2012)**

## **20-7-106. SERVICE CHARGE IMPOSED.**

The owner of property containing impervious surfaces which contribute runoff to the storm water system or who otherwise use or benefit from the Storm Water Utility of the City will be responsible for paying the Storm Water Utility fees as set forth in the Consolidated Fee Schedule. The fee shall be calculated by multiplying the service rate by the parcel's number of Equivalent Residential Units (ERU's.) An alternate billing agreement may be entered into which will allow the bill to be sent to an alternate party; however, the property owner retains all obligations for full payment of Storm Water Utility fees.

**(Ord. No. 01-05 Enacted 02/06/2001; Ord. No. 01-25 Amended 05/03/2001; Ord. No. 10-32 Amended 10/22/2010; Ord. No. 12-26 Amended 06/28/2012)**

## **20-7-107. SYSTEM OF RATES AND CHARGES.**

- (1) Service fees imposed. Except as provided below, the City will impose storm sewer drainage fee rates and charges on each parcel of real property within the City except governmentally-owned streets and storm water facilities operated and maintained by, or for the Storm Water Utility, the county or the State of Utah.
- (2) Use of funds collected. The charges shall fund the administration, planning, design, construction, operation, maintenance, and repair of existing and future storm water facilities. Storm Water Utility fees shall also fund water quality improvement programs required by West Valley City's Utah Pollutant Discharge Elimination System (UPDES) Phase 1 Municipal Storm Water Co-Permit, including: public education and outreach programs, illicit discharge detection and elimination programs, construction site storm water management, post-construction storm water management, and municipal operations to prevent and eliminate storm water pollution.
- (3) Methods of determining contribution of storm water.
  - a. Contributions of storm water from non-residential parcels and residential parcels larger than duplexes have been ascertained by determining and measuring impervious surface area using current aerial photography or from approved project plans.
  - b. Contributions of storm water from residential parcels have been ascertained by measuring impervious area on randomly selected parcels, to obtain an average impervious area.
- (4) Method of determining service fee rates: Storm drainage service fees shall be assessed on each parcel of real property within the City (including City-owned properties), except government-owned streets and utility, state or county storm water facilities. Monthly service fees shall set

forth in the Consolidated Fee Schedule and shall be differentiated according to the following classifications:

- a. Rate A: This is the standard rate which shall apply to all parcels which contribute runoff to the storm water system and do not qualify for a lesser rate. Rate A applies to:
  - i. Single-family residential parcels. Each parcel shall constitute one Equivalent Residential Unit (ERU).
  - ii. Duplex parcels. Each duplex parcel shall be charged two ERU's per parcel, or one ERU per dwelling unit.
  - iii. Planned Unit Developments (PUDs) or Condominiums which choose to have individual property owners billed separately, rather than paying for the entire development on one bill.
  - iv. Other parcels. Charges for all other parcels shall be computed by multiplying the total ERU's for a parcel by the monthly rate.
- b. Rate B:
  - i. Properties which Implement Treatment Control Best Management Practices. A reduced rate is available for commercial, industrial, institutional and multi-family developments which implement long term Best Management Practices (BMPs) to reduce or remove pollutants from storm runoff, before it leaves the development site. Eligible BMPs are listed in the Guidance Document for Storm Water Management, under Commercial and Industrial BMPs for treatment control. To qualify for this rate, the owner or representative of a parcel must:
    - A. Obtain BMP approval and secure a Storm Water Management Permit through the West Valley City Engineering Division.
    - B. Agree to allow annual inspections of the property to ensure the approved BMP is still in place and properly maintained. If BMPs are not properly maintained, the site will no longer qualify for a reduced rate.
  - ii. Planned Unit Developments (PUDs) and Condominiums. Rate B applies to Planned Unit Developments (PUDs) and Condominiums with a total impervious surface area less than 1 Equivalent Residential Unit (ERU) per unit, provided that the entire PUD development site and/or Condominium development site is billed under one bill.
  - iii. Properties which retain the first 0.38 inches of rain runoff (2-year 30 minute storm) for new development projects, and 0.28 inches of rain runoff (2-year 15 minute storm) for re-development projects. Water is to be stored on-site using Low Impact Development techniques. To qualify for this rate, the owner or representative of a parcel must:
    - A. Submit plans to the Engineering Division for approval showing drainage calculations to compute runoff volumes, and show how runoff will be permanently stored on-site for infiltration.
- c. Rate C: Some areas of the City are designated as retention or infiltration areas in the Storm Drainage Master Plan. Developments in these areas are designed to discharge no storm water runoff from the site. These properties and properties in other parts of the City, which retain all storm water on site, are beneficiaries of the Storm Water Utility, even though they have no direct storm water discharge. An analysis of the Utility costs has shown that approximately one half of the Utility's costs are fixed program expenditures not directly affected by runoff from individual parcels. The costs of compliance with the City's UPDES Permit, and maintenance of the City's street drainage

system are examples of fixed costs, which benefit properties not contributing runoff to the Storm Water Utility system. Rate C applies to all properties which retain all storm water runoff. Planned Unit Developments (PUDs) or Condominiums that meet retainage requirements under this Section may be charged Rate "C."

- d. No charge: There will be no service charge for undeveloped parcels. Similarly, there will be no charge for sparsely developed parcels which include impervious surface areas which are:
  - i. Within a parcel, or combination of parcels with the same ownership, which exceeds 100 acres in size; and
  - ii. Distant from the storm drainage system, such that the possibility of a future connection to the system is remote; and
  - iii. Isolated from other impervious areas; and
  - iv. Adjacent to an undeveloped area of equal size, owned or controlled by the same property owner, capable of absorbing the runoff from the impervious surfaces.

(Ord. No. 01-05 Enacted 02/06/2001; Ord. No. 01-25 Amended 05/03/2001; Ord. No. 05-23 Amended 05/17/2005; Ord. No. 10-32 Amended 10/22/2010; Ord. No. 12-17 Amended 05/17/2012; Ord. No. 16-04 Amended 01/29/2016)

## 20-7-108. BILLING AND COLLECTION.

- (1) **Utility Enterprise Fund.** This Ordinance creates the Storm Water Utility Fund. All revenues received from storm drainage user fees shall be placed in the enterprise fund as a designated fund, to be left separate and apart from all other City funds. The collection, accounting, and expenditure of all Storm Water Utility funds shall be in accordance with the Utah Uniform Fiscal Procedures Act.
- (2) **Billing.** The City shall bill, or cause to be billed, property owners for storm sewer drainage utility services. Fees and charges shall be considered delinquent if not paid as determined by the procedures established by the City and will be a debt to the City, which shall be subject to recovery in a civil action.
- (3) **Alternate Billing Agreements and Deposit Requirement.** Owners may assign the payment of the storm water utility fee to non-owners by signing an "Alternate Billing Agreement" with the City. The non-owner will be required to place a deposit with the City for \$50.00 or the equivalent of TWO months of ERU assessment, whichever is greater. Failure of the non-owner to pay the storm water utility fee shall not relieve the owner from the responsibility of paying the unpaid fees.
  - a. **Exception.** Established non-owners who have had an account with the City for one year or more and the billing account for that particular property has not been in arrears during that one year period will be exempt from the deposit. It shall be the responsibility of the owners or non-owners to notify the City that they qualify for this exception. However, a signed "Alternate Billing Agreement" shall still be required.
- (4) **Late Fee Imposed.** Fees and charges levied in accordance herewith shall be a debt due to the City. Failure to pay within 25 days after the due date (printed on the bill) shall be subject to late fees declared in the Consolidated Fee Schedule and are deemed delinquent. Delinquent accounts are subject to recovery through civil action, including the payment of reasonable legal fees.

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**(Ord. No. 01-05 Enacted 02/06/2001; Ord. No. 09-29 Amended 08/31/2009; Ord. No. 09-35 Amended 11/06/2009; Ord. No. 12-26 Amended 06/28/2012)**

## **20-7-109. APPEAL OF CHARGES.**

Any non-residential customer who disagrees with the storm drainage user fee for his or her parcel may apply to the Director for a user fee adjustment. The adjustment request must state the grounds for adjustment and must be filed in writing with the Director no later than thirty (30) days after receipt of billing. The Director shall review the request and basis for user charges to determine whether an error was made in the calculation or application of the fee. The Director may approve an adjustment to the fee.

An appeal of a Director's decision may be brought before the City Manager within thirty (30) days after the date of the Director's decision. Decision of the City Manager shall be final and conclusive.

If an appeal of charges is successful, credit will be applied to all charges from the time of the appealed billing, and will be reflected on a future billing after the appeal is granted.

**(Ord. No. 01-05 Enacted 02/06/2001)**

## **20-7-110. ANNUAL REPORT TO STORM WATER UTILITY CUSTOMERS.**

The City's Public Works Department, acting through the Citizen's Storm Water Management Advisory Committee, shall cause to be completed an annual report on the Storm Water Utility which, if accepted, shall be approved by the City Council. This report shall summarize the financial activities of the Utility and the major areas of expenditure, field activities, accomplishments, and the upcoming year's priorities.

**(Ord. No. 01-05 Enacted 02/06/2001; Ord. No. 5-23 Amended 05/17/2005)**